IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 283 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KAILASHBEN D/O GOVINDBHAI VELABHAI & 4 - Appellant(s)
Versus
GUJ STATE ROAD TRANSPORT CORPN & 2 - Defendant(s)

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Appearance :
MR HM PARIKH for Appellant(s) : 1 - 5.
MR RR MARSHALL for Defendant(s) : 3,
None for Defendant(s) : 2,
MR MD PANDYA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1. By way of this appeal under Section 110-D of the Motor Vehicles Act, the appellants have challenged the judgement and award dated 06.01.1982 passed by Motor Accident Claims Tribunal (Aux.), Kheda at Nadiad in M.A.C.P. No. 558 of 1982 whereby the same was dismissed.

2. It is the case of the appellants that on 20.02.1982 deceased was the driver on vehicle No. G.T.G. 3891 and was going from Kapadwanj to Nadiad after loading goods in the said Tempo. The said Tempo came near Bilodre an S.T. Bus from Vina to Nadiad was going ahead of the Tempo. The deceased blow horn and asked for side and so the S.T. Bus driver gave side that the driver of the Tempo

increased its speed to overtake the S.T. Bus. All of a sudden, the driver of the S.T. Bus took his bus on the right side i.e. on the wrong side and before the driver of the Tempo can stop his vehicle, the Tempo collided with the rear portion of the S.T. Bus and toppled down in the ditch on the right side of the road. Therefore the legal heirs of the deceased have claimed Rs. 60,000/- by way of compensation.

3. Mr. Parikh, learned advocate for the appellants has submitted that the Tribunal ought to have seen that the Insurance Company was liable to pay the compensation as the Insurance Policy is in existence at the time of accident.

3.1 He further submitted that the deceased was earning Rs. 7,440/- per year, the Tribunal ought to have awarded a sum of Rs. 60,000/- towards compensation.

4. Heard. Learned counsel for the parties I have gone through the order of the Tribunal it is relied upon the decision of the Hon'ble Supreme Court in the case of ***Ramashray Singh Vs. New India Assurance Co. Ltd. and others reported in 2003 SCC 664*** wherein it was observed that under Section 147(1)(b) proviso and Section 146 of

the Motor Vehicles Act, 1988 the expression 'Third Party Risk' as specified in sub-clauses (i) and (ii) of Section 147(1)(b) covers only a driver, a conductor or an examiner of tickets and no other employee such as cleaner(khalasi), and mere fact of insurance policy specifying that insurance had been paid by the appellant owner for “seating capacity including driver and cleaner” (13 passengers + 1 driver)does not mean that cleaner could be included as passenger for imposing liability on the Insurance Company. Therefore the case of the driver is covered.

5. Therefore Tribunal has committed an error when passing award the insurance company itself his written statement has raised the contention. In that view of the matter the same is accepted the present appellants have entitled for compensation under the Workmen Compensation Act.

6. The deceased was earning Rs. 300/- per month. Therefore as per the Schedule IV of the Workman's Compensation Act, 1923 if the monthly income is Rs. 300/- the amount of compensation in case of death or permanent total disablement would be Rs. 18,000/-. Accordingly it is held that the claimant would be entitled to sum of Rs. ***18,000/-*** with ***6%*** running interest from the date of application.

7. The appeal is therefore partly allowed. No order as to costs.

(K.S. JHAVERI, J.)

Suresh *